

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

STIMSON MILL COMPANY, a corporation,  
Respondent.

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Transcript of the Record

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Upon Petition to Review a Decision of the United  
States Board of Tax Appeals

FILED

SEP 15 1942

PAUL P. O'BRIEN,  
CLERK



No. 10202

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES

For Taxpayer:

E. E. ADAMS, C.P.A.

For Comm'r.:

T. M. MATHER, Esq.,

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Docket No. 104290

STIMSON MILL COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## DOCKET ENTRIES

1940

Aug. 19—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 19—Request for hearing in Seattle, Washington filed by taxpayer. 8/20/40 copy served.

Aug. 20—Copy of petition served on General Counsel.

Sept. 25—Answer filed by General Counsel.

Sept. 30—Copy of answer served on taxpayer. Seattle, Washington.

1941

Jul. 22—Hearing set Sept. 8, 1941 in Seattle, Washington.

Sept. 8—Hearing had before Mr. Sternhagen on the merits. Stipulation of facts filed. Briefs due as per rules.

Sept. 27—Transcript of hearing of 9/8/41 filed.

Oct. 6—Brief filed by taxpayer.

Oct. 23—Brief filed by General Counsel. 10/24/41 copy served.

1942

Jan. 22—Opinion rendered, Sternhagen, Div. 10. Decision will be entered for the petitioner. 1/27/42 copy served.

Jan. 27—Decision entered, Sternhagen, Div. 10.

Feb. 18—Motion for review by the Board filed by General Counsel. 2/19/42 denied.

Apr. 18—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit with assignments of error filed by General Counsel.

Apr. 27—Proof of service filed by General Counsel.  
(2)

May 18—Certified copy of order from the 9th Circuit extending the time for preparation and transmission of the record filed.

Jul. 14—Statement of points filed by General Counsel with proof of service thereon.

Jul. 14—Agreed designation of contents of record filed. [1\*]

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\*Page numbering appearing at top of page of original certified Transcript of Record.



United States Board of Tax Appeals

Docket No. 104290

STIMSON MILL COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above named taxpayer hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 28, 1940, symbols Seattle Division, IT:90D:JIK, and as a basis of its proceedings alleges as follows:

1. The petitioner is a corporation of the State of Washington, with its principal place of business at 2116 Vernon Place, Seattle, Washington. The return for the period here involved was filed with the Collector of Internal Revenue, Tacoma, Washington.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on or about June 28, 1940.

3. The taxes in controversy are income taxes for the taxable year ended December 31, 1938 in the total amount of the deficiency asserted by the respondent, viz., \$380.00.

4. The determination of the tax set forth in the said notice of deficiency is based upon the following error: [2]

(a) Respondent has erroneously disallowed a capital loss of \$2,000.00 realized in the liquidation of Second Holding Corporation; or

(b) In the alternative, respondent has refused to allow a capital loss of \$2,000.00, resulting from the stock of Second Holding Corporation becoming worthless during the taxable year.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

### STATEMENT OF FACTS

1. On May 10, 1930 the petitioner caused to be organized under the laws of the State of Washington, a corporation designated as Second Holding Corporation, hereinafter for convenience called "Second".

2. On that date the petitioner owned certain lands lying in Township 32 North, Ranges 5 and 6 East of the Willamette Meridian.

3. The said lands had been acquired by the petitioner prior to March 1, 1913 and had been held by it in fee simple thereafter until transferred to the said Second.

4. The Timber Section of the Bureau of Internal Revenue determined that the lands lying in Range 5 East, W. M. had a fair market value at March 1, 1913 of \$12.50 per acre and that the land in Range 6 East, W. M. had a fair market value of \$2.50 per acre.

5. On May 14, 1930 the petitioner transferred to

the said Second 1575.59 acres of land situate in Township 32 N., Range 5 E., W. M. and 1,401.8 acres situate in Township 32 N., Range 6 E., W. M. in exchange for the entire issue of Second's capital stock.

6. Petitioner was sole stockholder of Second throughout the latter's existence.

7. The fair market value of the said lands as of March 1, 1913 was \$23,199.37.

8. The cost to petitioner of said lands was not less than \$9,000.00. [3]

9. The sole purpose for which Second was incorporated was to hold title to the said lands, to sell them in such parcels and on such terms as might seem desirable, to collect the proceeds of such sales and turn them over to the petitioner.

10. It was never contemplated by the petitioner or its officers or trustees, or by the representatives of petitioner who acted as officers and trustees of Second, that Second should engage in any activity other than as hereinbefore outlined, and Second never engaged in any activity not so contemplated.

11. Second sold land from time to time and transferred the avails therefrom to the petitioner in the following amounts:

1931.....	\$1,038.50
1932.....	1,185.00
1937.....	279.99
1938.....	2,158.65
	<hr/>
	\$4,662.14
	<hr/>

12. None of the above distributions were formally authorized by the trustees of Second, and its minute book shows no resolution at any time to liquidate or to distribute.

13. The proceeds from the last sale of land were transferred to petitioner in June 1938.

14. On December 22, 1938 the trustees of Second met and resolved that, inasmuch as the purpose of Second had been fulfilled by the several sales, collections and liquidating distributions, and there was nothing left but the bare shell of corporate organization, the corporation should be dissolved.

15. No steps were taken to dissolve Second but it was forthwith abandoned.

16. The income of Second was included with that of the petitioner in consolidated income tax returns filed for the years 1930 to 1932, inclusive. The petitioner derived no tax advantage from the losses of Second except in 1932 when petitioner's taxable income was thus reduced thereby in the amount of \$1,565.00, as follows:

#### TAXABLE INCOME

	Petitioner	Subsidiary
1930.....	\$53,685.38*	\$12,257.60*
1931.....	4,237.87*	267.65
1932.....	4,137.86	1,565.00*
	<u>          </u>	<u>          </u>

\*Indicates net losses in red.

Wherefore, petitioner prays that this Board may hear the proceedings and determine

(a) That petitioner suffered a capital loss of \$2,000.00 through complete liquidation of Second Holding Corporation, the first distribution therein being made in the year 1931 and the last of the series of distributions being made in the year 1938; or

(b) In the alternative, that Second Holding Corporation made no distributions in complete liquidation within the scope of Sections 112(b)(6) and 115 (c) of the Revenue Act of 1938;

(c) That the correct tax liability of the petitioner for the year 1938 was \$6,325.57, as originally assessed and paid to the Collector of Internal Revenue, and

(d) That the Board give this petitioner such other and further relief as is just and equitable in the premises.

E. E. ADAMS

Certified Public Accountant

Counsel for Petitioner

1146 Henry Building,  
Seattle, Washington [5]

(Duly verified) [6]

## EXHIBIT A

Treasury Department  
Internal Revenue Service  
Seattle, Washington  
June 28, 1940

Seattle Division  
350 Federal Office Building  
IT:90D:JIK

Stimson Mill Company,  
2116 Vernon Place,  
Seattle, Washington.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1938, discloses a deficiency of \$380.00 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Internal Revenue Agent in Charge, Seattle, Washington, for the attention of IT:90D:JIK. The signing and filing of this form will expedite the

closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By GEORGE C. EARLEY,

Internal Revenue Agent in Charge

Enclosures:

Statement.

Form of waiver.

JK:RMT [7]

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STATEMENT

IT:90D:JK

Stimson Mill Company

1116 Vernon Place

Seattle, Washington

Tax Liability for the Taxable Year Ended

December 31, 1938

Income Tax

Liability—\$6,705.57

Assessed—\$6,325.57

Deficiency—\$380.00

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated January 12, 1940;



to your protest dated March 23, 1940; and to the statements made at the conferences held on April 17, 1940, May 17, 1940 and May 24, 1940.

A copy of this letter and statement has been mailed to your representative E. E. Adams, 1146 Henry Building, Seattle, Washington, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

#### ADJUSTMENT TO NET INCOME

Net income as disclosed by return.....	\$36,156.75
Unallowable deduction and additional income	
(a) Capital loss .....	2,000.00
	<hr/>
Net income adjusted.....	\$38,156.75

#### EXPLANATION OF ADJUSTMENT

(a) The loss claimed in your return of \$2,000.00 upon the liquidation of Second Holding Corporation is disallowed for the reason that the transaction in which the loss is claimed to have occurred represented the receipt of property upon complete liquidation of another corporation in connection with which no loss may be recognized under section 112(b)(6) of the Revenue Act of 1938. In addition, the basis of loss of the stock in question has not been proven. [8]



COMPUTATION OF TAX

Excess-Profits Tax

Taxable Net income.....	\$ 38,156.75
Less: Dividends received credit	
(85% of \$30.00).....	25.50
10% of \$1,000,000.00, value of	
capital stock as declared in	
your capital stock tax return	
for year dated June 30, 1938..	100,000.00
	100,025.00

Net income subject to excess-profit tax.....	None
Excess-profits tax .....	None

Income Tax

Taxable net income.....	38,156.75
Less: Excess-profits tax.....	None

Net income for income tax computation.....	\$ 38,156.75
Tentative Tax: .....	7,249.78

19% of \$38,156.75

14.025% of dividends received—

\$30.00 .....\$ 4.21

2.5% of dividends paid credit—

\$21,600.00 ..... 540.00 544.21

Total income tax.....	6,705.57
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Income tax assessed

Original, Account No. 401128..... 6,325.57

Deficiency of income tax.....	\$ 380.00
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[Endorsed]: U. S. B. T. A. Filed Aug. 19, 1940.

[9]

[Title of Board and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in question are income taxes for the taxable year ended December 31, 1938, but denies that the amount in controversy is as alleged in paragraph 3 of the petition.

4. (a) and (b). Denies that the Commissioner erred as alleged in subparagraphs (a) and (b) of paragraph 4 of the petition.

5. 1 to 16, inclusive. For lack of information and knowledge sufficient to form a belief, denies the allegations contained in [10] subparagraphs 1 to 16, inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition herein, not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

(Signed) J. P. WENCHEL,

BHN

Chief Counsel, Bureau  
of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel,

B. H. NEBLETT,

Special Attorney,

Bureau of Internal Revenue.

BHN/vg 9-19-40

[Endorsed]: U. S. B. T. A. Filed Sept. 25, 1940.

[11]

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[Title of Board and Cause.]

### STIPULATION

It is hereby stipulated and agreed, by and between the above named parties, by their respective counsel, that:

1. Second Holding Corporation was organized in 1930 and petitioner acquired all of the capital stock of the said Second Holding Corporation in exchange for 1,575.59 acres of logged-off land lying in Township 32 North, Range 5 East W. M., and 1,401.8 acres of logged-off land lying in Township 32 North, Range 6 East W. M.

2. The said lands were acquired by petitioner while covered with a stand of timber and there was no segregation of cost between the land and the timber.

3. A fair allocation of cost to the said lands would be not less than \$9,000.00.

4. The income of Second Holding Corporation

was reported on returns separate from those of the petitioner except for the years 1930, 1931 and 1932, for which years consolidated returns were filed.

5. In 1930 both petitioner and Second Holding Corporation had net losses.

6. In 1931 petitioner had a net loss and Second Holding Corporation had net income of \$267.65.

7. In 1932 petitioner benefitted by a deduction of \$1,565.00 net loss of Second Holding Corporation.

8. Petitioner was the sole stockholder of Second Holding Corporation throughout its entire existence, except for qualifying shares the beneficial interest of which was in petitioner.

9. Second Holding Corporation was organized for the sole purpose of liquidating the land described in paragraph (1) of this [12] stipulation and transferring the proceeds to petitioner as soon as converted into cash.

10. Second Holding Corporation sold land from time to time and transferred the avails therefrom to the petitioner in the following amounts:

1931 .....	\$1,038.50
1932 .....	1,185.00
1937 .....	279.99
1938 .....	2,158.65
	<hr/>
	\$4,662.14
	<hr/> <hr/>

11. The proceeds from the last sale of land were transferred to petitioner in June 1938.

12. The minute book of Second Holding Corporation contains a record of a meeting of that

company's trustees on December 22, 1938, of which the attached Exhibit A is a copy.

13. The minute book of Second Holding Corporation contains no record of any meeting wherein either liquidation or dissolution was discussed or wherein any distributions of any kind were authorized.

14. No steps were taken to dissolve Second Holding Corporation but it was abandoned forthwith, immediately after the meeting, the minutes of which is attached as Exhibit A.

E. E. ADAMS,

E. E. Adams

Certified Public Account-  
ant, for the Petitioner.

J. P. WENCHEL

For the Respondent. [13]

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### EXHIBIT "A"

#### SECOND HOLDING CORPORATION MINUTES OF MEETING OF TRUSTEES

A special meeting of the trustees of Second Holding Corporation was held at 1:30 P. M., December 22, 1938.

John A. Baillargeon and E. C. Stone were present, being all of the trustees of the Company. Mr. Baillargeon acted as Chairman and Mr. Stone as Secretary.

Mr. Baillargeon stated that the plan of liquidation of the company and its assets, which had been instituted in 1931, had been completed, and that

the Company had no further assets. He reported that liquidating dividends had been paid to Stimson Mill Company, as stockholder, as follows: 1931—\$1038.50; 1932—\$1185.00; 1937—\$279.99; 1938—\$2158.65.

The following resolution was then passed:—

Resolved that the liquidation of the Second Holding Corporation and its assets begun in the year 1931 has now been completed and the payment of liquidating dividends as made to Stimson Mill Company for the years 1931, 1932, 1937 and 1938, are approved. That the signature of Stimson Mill Company on the Minutes of this meeting shows its approval of this Resolution and its acknowledgment that the plan of liquidation has been completely carried out.

Mr. Baillargeon then stated that there was nothing further to do except the disincorporation of the Company, and it was decided to turn this matter over to an attorney so that all of the legal requirements of dissolution could be complied with. [14]

There being no further business, the meeting adjourned.

(Signed) JOHN A. BAILLARGEON  
Chairman

(Signed) E. C. STONE  
Secretary

STIMSON MILL COMPANY

By (Signed) JOHN A. BAILLARGEON  
President

[Endorsed]: U. S. B. T. A. Filed Sept. 8, 1941.

[15]

[Title of Board and Cause.]

TRANSCRIPT OF PROCEEDINGS

Federal Office Building,  
Seattle, Washington,  
September 8, 1941.  
Ten o'clock a. m.

Met pursuant to notice.

Before: Hon. John M. Sternhagen.

APPEARANCES:

E. E. ADAMS, Esq., C. P. A., with C. S. Cowan &  
Co., Henry Building, Seattle, Washington, ap-  
pearing for the petitioner.

E. M. MATHER, Esq., 1215 Smith Tower, Seattle,  
Washington, appearing for respondent. [16]

PROCEEDINGS

The Court: Docket 104290, Stimson Mill Com-  
pany.

Who appears for the petitioner?

Mr. Adams: E. E. Adams, C. P. A., appearing  
for the petitioner.

Mr. Mather: E. M. Mather, appearing for the  
respondent.

The Court: All right, sir.

Mr. Adams: Your Honor, we have a written  
stipulation of facts that we wish to present.

The Court: Will you please tell me what the  
case is about?



STATEMENT OF CASE ON BEHALF  
OF PETITIONER

Mr. Adams: This case deals entirely with the question of whether a capital loss is allowable to the extent of \$2,000, resulting either from a liquidation of the subsidiary, or, in the alternative, a worthless stock loss, and the petitioner claims such a loss which was disallowed by the respondent upon the ground that Provision 112(b)6 of the Revenue Act of 1938, the applicable statute barred recognition of the loss.

The petitioner's position is that the provisions of that section, which deal with the time limit in which the liquidations occur under the plan of liquidation is a bar to the application of the statute, and, in the alternative, that there was no plan of liquidation adopted, and the distributions made were distributions out of capital, and that some six months after the last distribution was made and when there was nothing in the corporation but Shell, that the stock was worthless and it was charged off at that time. [18]

The Court: Is your case entirely in a stipulation of facts?

Mr. Adams: In a written stipulation of facts which we desire to amend at the suggestion of counsel for the respondent, by adding one sentence thereto.

Mr. Mather: That, substantially, is the issue in the case, if your Honor please. It involves \$380 deficiency for the year 1938; which is all covered



by a stipulation of facts, upon which that issue can be decided.

The Court: All right; you may hand in your stipulation.

Mr. Adams: The amendment which is to be added to the stipulation is on point 14, the last point, to change the final period to a comma and add, "immediately after the meeting, the minute of which is attached to Exhibit A."

Mr. Mather: That is agreeable, your Honor.

The Court: Those are quoted words, are they, "the minute of which is attached to Exhibit A"?

Mr. Adams: Yes, sir. And with that, the petitioner rests, your Honor.

The Court: Is there anything for the respondent?

Mr. Mather: That is all, your Honor.

The Court: You want to file your briefs, I suppose?

Mr. Adams: I suppose briefs on the law.

The Court: You suppose what?

Mr. Adams: I suppose that we file a brief on the law.

The Court: If you want to file briefs, you can file them in accordance with the rule.

Mr. Adams: Yes, sir.

(Hearing concluded.)

[Endorsed]: U. S. B. T. A. Filed Sept. 27, 1941.

[19]

[Title of Board and Cause.]

### OPINION

Docket No. 104290. Promulgated January 22, 1942.

A receipt by a corporation entirely of money in complete liquidation of another corporation of which it owns all the shares, held, not within section 112(b)(6), Revenue Act of 1938, and the loss may be recognized.

E. E. Adams, C. P. A., for the petitioner.

T. M. Mather, Esq., for the respondent.

Sternhagen:

In determining a deficiency of \$380 in petitioner's income tax for 1938, the Commissioner disallowed a loss of \$2,000, saying:

The loss claimed in your return of \$2,000 upon the liquidation of Second Holding Corporation is disallowed for the reason that the transaction in which the loss is claimed to have occurred represented the receipt of property upon complete liquidation of another corporation in connection with which no loss may be recognized under section 112(b)(6) of the Revenue Act of 1938. In addition, the basis of loss of the stock in question has not been proven.

The facts are found as stipulated. The return was filed in Tacoma, Washington.

The petitioner owned all the shares of the Second Holding Corporation from the time of its organization in 1930, having received them in ex-

change for two tracts of land from which petitioner had removed the timber. The cost to petitioner of the land, and hence its basis for the shares, was \$9,000. Second Holding Corporation was organized for the sole purpose of liquidating the land and transferring the proceeds to petitioner as soon as converted into cash. Such proceeds were transferred to petitioner, as follows:

1931 .....	\$1,038.50
1932 .....	1,185.00
1937 .....	279.99
1938 .....	2,158.65
<hr/>	
Total.....	4,662.14

[20]

The Second Holding Corporation was then abandoned, after the trustees had resolved that the liquidation begun in 1931 was completed and that the payment of the foregoing liquidating dividends was approved.

The \$2,158.65 received by the petitioner in 1938 was the last item of liquidation of the Second Holding Corporation. By section 115(c) of the Revenue Act of 1938 it "shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 111, but shall be recognized only to the extent provided in section 112." By section 111, "the loss shall be the excess of the adjusted basis provided" in section

113(b) "for determining loss over the amount realized." The amount realized is, by section 111(b), "the sum of any money received." The extent of the gain is, by section 111(c), determinable under section 112.

Section 112 covers the entire subject of recognition of gain or loss, and provides as the general rule that upon sale or exchange of property the entire amount of gain or loss shall be recognized, and provides specific exceptions. Subdivision (b) describes eight exceptions of "exchanges solely in kind", and subdivisions (c), (d), and (e) describe exceptions of "exchanges not solely in kind." The Commissioner's determination that no loss of petitioner may be recognized is founded upon section 112(b)(6), dealing with "Property Received by a Corporation on Complete Liquidation of Another", which provides, "No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation." The petitioner contends that section 112(b)(6) is inapplicable because its receipt of only money may not be regarded as a receipt of property.

The petitioner's position is correct. The entire Supplement B, sections 111 to 121, covering the subject of computation of net income, contains repeated references to property and to money in separate classes and there is a clear manifestation of legislative intent to prevent the confusion of one with the other. A taxpayer corporation which bought a property for \$x organized a new corpo-

ration, to which it transferred the property in exchange for all the shares, had the new corporation sell the property for \$3x, and transferred the \$3x to the taxpayer in complete liquidation, would surely not have been permitted to avoid tax on the \$2x gain in reliance upon section 112(b)(6). The no-gain-or-loss provision was intended to cover situations in which the corporate taxpayer received property and not money, so that realization would not occur until the property was converted into cash. In a liquidation of property requiring a further step by the distributee to bring about realization of money, no gain [21] or loss was to be recognized as the subject of tax or deduction until the conversion into money. How else and when would such a clear gain as appears in the foregoing illustration be taxed? We can not agree, therefore, with the conclusion of G. C. M. 19,435, 17 C. B. (1), p. 176.

The holding of *Halliburton v. Commissioner*, 78 Fed. (2d) 265, construing the word property in section 203(b)(4), Revenue Act of 1924 (section 112(b)(5), Revenue Act of 1938), as including money, may not be extended beyond its own rationale into any of the other subdivisions of section 112. The reasoning of the court was to promote the intendment of subdivision (b)(5), and the language of the opinion was clearly limited within that scope. It may not be adopted as a pronouncement that elsewhere in the statute the meaning of the word property must be read as includ-

ing money. No decisions have applied the doctrine to any other provisions of the statute. See *Portland Oil Co. v. Commissioner*, 109 Fed. (2d) 479, 488; *George P. Skouras*, 45 B. T. A. — (Dec. 17, 1941).

The Commissioner was in error in disallowing any deduction for petitioner's loss. The deduction should have been allowed within the capital loss limitation, and the determination is reversed.

Decision will be entered for the petitioner. [22]

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United States Board of Tax Appeals  
Washington

Docket No. 104290

STIMSON MILL COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

In accordance with the Board's report, promulgated January 22, 1942, it is

Ordered and Decided That there is no deficiency in income tax for 1938.

Enter:

Entered Jan. 27, 1942.

[Seal] (S) J. M. STERNHAGEN,

Member. [23]



In the United States Circuit Court of Appeals  
for the Ninth Circuit

B. T. A. Docket No. 104290

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review.

v.

STIMSON MILL COMPANY,

Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John W. Smith, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

#### I.

##### Jurisdiction

That the petitioner on review, hereinafter referred to as the Commissioner, is the duly appointed, qualified, and Acting Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States; that the respondent on review, Stimson Mill Company, hereinafter referred to as the taxpayer, is a corporation organ-

ized in 1890 under the laws of the State of Washington, with its principal place of business at Seattle, Washington.

That the taxpayer executed and filed a Federal corporation income and excess-profits tax return (Form 1120) for the year 1938 with the [24] Collector of Internal Revenue for the District of Washington, Tacoma, Washington, whose office is within the jurisdiction of this Honorable Court; that the Court in which the review of this cause is sought is the United States Circuit Court of Appeals for the Ninth Circuit.

That the Commissioner files this petition for review pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

## II.

### Nature of Controversy.

The nature of the controversy is as follows, to-wit:

Taxpayer owned all the shares of the Second Holding Corporation from the time of its organization in 1930, having received them in exchange for two tracts of land from which taxpayer had removed the timber. The Second Holding Corporation was organized for the sole purpose of liquidating the land and transferring the proceeds to taxpayer as soon as converted into cash. Certain amounts were transferred to taxpayer in 1931, 1932, and 1937. In 1938 the taxpayer received \$2,158.65 in money in complete liquidation of the Second Holding Corporation.



Taxpayer in its 1938 tax return claimed a capital loss of \$2,000 against the loss of \$18,514.43 alleged to have been sustained on the capital stock of the Second Holding Corporation. In auditing the return the Commissioner denied the deduction of the alleged capital loss for the year 1938, and on June 28, 1940, proposed a deficiency in income tax for said year in the amount of \$380.00 on two grounds: (1) That the transaction in which the loss was claimed to have occurred represented [25] the receipt of property upon complete liquidation of the Second Holding Corporation in connection with which no loss may be recognized under Section 112(b)(6) of the Revenue Act of 1938, 52 Stat. 447, and (2) the basis of the loss of the stock in question had not been proven.

On August 19, 1940, taxpayer filed a petition with the United States Board of Tax Appeals, appealing from the deficiency set forth in the notice of deficiency dated June 28, 1940, alleging that the Commissioner had erred in disallowing the capital loss of \$2,000 realized in the liquidation of the Second Holding Corporation, or, in the alternative, Commissioner had refused to allow a capital loss of \$2,000 resulting from the stock of Second Holding Corporation becoming worthless during 1938. On September 25, 1940, the Commissioner filed his answer to said petition. The proceedings came on for hearing before a Division of the Board of Tax Appeals at Seattle, Washington, September 8, 1941.

On January 22, 1942, the Board promulgated its

opinion (46 B. T. A.—No. 19) wherein it held that the loss may be recognized on the ground that Section 112(b)(6), *supra*, is inapplicable because taxpayer's receipt of only money may not be regarded as a receipt of property. On January 27, 1942, the Board entered its decision wherein and whereby it ordered and decided that there is no deficiency in income tax for the calendar year 1938. [26]

\* \* \* \* \*

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for Ninth Circuit, that a transcript of record be prepared in accordance with the rules of said Court and transmitted to the Clerk of said Court for filing, and that proper action be taken to the end that the errors complained of may be reviewed by said Court.

(Sgd.) SAMUEL O. CLARK, JR.

Assistant Attorney General

(Signed) J. P. WENCHEL

R.L.W.

Chief, Counsel, Bureau of  
Internal Revenue, Coun-  
sel for Petitioner on  
Review.

Of Counsel:

JOHN W. SMITH,

Special Attorney,

Bureau of Internal Revenue.

JWS:br 4-17-42

[Endorsed]: U. S. B. T. A. Filed Apr. 18, 1942.

[28]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To Stimson Mill Company, 2116 Vernon Place,  
Seattle, Washington.

You are hereby notified that the Commissioner of Internal Revenue did, on the 18th day of April, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 18th day of April, 1942.

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of  
Internal Revenue, Coun-  
sel for Petitioner on  
Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 21st day of April, 1942.

STIMSON MILL COMPANY

By JOHN A. BAILLARGEON

[Endorsed]: U. S. B. T. A. Filed Apr. 27, 1942.

[Title of Circuit Court of Appeals and Cause—  
B. T. A. Docket No. 104290.]

NOTICE OF FILING PETITION  
FOR REVIEW

To E. E. Adams, 1146 Henry Building, Seattle,  
Washington.

You are hereby notified that the Commissioner of Internal Revenue did, on the 18th day of April, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 18th day of April, 1942.

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of  
Internal Revenue, Coun-  
sel for Petitioner on  
Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 20 day of April, 1942.

(S) E. E. ADAMS

Counsel for Respondent on Review

[Endorsed]: U. S. B. T. A. Filed Apr. 27, 1942.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, the petitioner on review herein, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

1. The Board erred in holding and deciding that the term "property" as used in Section 112(b)(6) of the Revenue Act of 1938, 52 Stat. 447 does not include money and the loss realized on the complete liquidation by taxpayer of its sole-owned corporation may be recognized.

2. The Board erred in holding and deciding that Section 112(b)(6) of the Revenue Act of 1938, 52 Stat. 447, is inapplicable because taxpayer's receipt of only money may not be regarded as a "receipt of property."

3. The Board erred in failing to hold and decide that the term "property" as used in Section 112(b)(6) of the Revenue Act of 1938, 52 Stat. 447, includes money received in complete liquidation of another corporation.

4. The Board erred in entering its decision wherein it ordered and decided that there is no deficiency in income tax for the calendar year 1938.

5. The Board erred in failing and refusing to enter a decision [31] redetermining a deficiency of \$380.00 for the calendar year 1938.

6. The Board erred in that its decision is not supported by the evidence.

7. The Board erred in that its decision is contrary to law and regulation.

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of  
Internal Revenue, Coun-  
sel for Petitioner on  
Review.

Service of a copy of the within statement of points is hereby admitted this 10 day of July, 1942.

P. W. MAXWELL,

Counsel for Respondent on Review  
804 White Bldg., Seattle,  
Wash.

JWS:br 7-7-42

[Endorsed]: U. S. B. T. A. Filed Jul. 14, 1942.

[32]

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[Title of Circuit Court of Appeals and Cause—  
B. T. A. Docket No. 104290.]

DESIGNATION OF PORTIONS OF RECORD,  
PROCEEDINGS AND EVIDENCE TO BE  
CONTAINED IN THE RECORD ON RE-  
VIEW

To the Clerk of the United States Board of Tax  
Appeals:

You will please prepare, transmit and deliver to  
the Clerk of the United States Circuit Court of

Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above-entitled proceeding in connection with the petition for review by the Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of all proceedings before the Board.
2. Pleadings before the Board:
  - (a) Petition including copy of deficiency letter.
  - (b) Answer.
3. Stipulation of facts, filed September 8, 1941, with Exhibit A attached.
- 3a. Official Report of Proceedings before Board, September 8, 1941.
4. Opinion and Decision.
5. Petition for review, together with proof of service of notice of filing and of service of a copy of petition for review. [33]
6. Statement of Points to be relied upon by the Commissioner.
7. Court order enlarging time for the preparation, transmission and delivery of the certified typewritten transcript of the record on review. [Not included in record.]
8. This designation of portions of the record, proceedings, and evidence to be contained in the record on review.



Said transcript is to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of  
Internal Revenue, Coun-  
sel for Petitioner on  
Review.

Service of a copy of the within designation is hereby admitted this 10 day of July, 1942. Agreed to:

(Sgd.) P. W. MAXWELL

Counsel for Respondent on Review

JWS:br 7-7-42

[Endorsed]: U. S. B. T. A. Filed Jul. 14, 1942.

[34]



In the United States Circuit Court of Appeals  
for the Ninth Circuit

C. C. A. No. 10202

B. T. A. Docket No. 104290

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review,

v.

STIMSON MILL COMPANY,

Respondent on Review.

### ORDER EXTENDING TIME

Upon consideration of the motion filed herein by petitioner on review, and good cause appearing to the Court for the granting of such motion, it is by the Court ordered:

That the motion is granted as made and that the time for the preparation and transmission to the Clerk of this Court of the record sur petition for review filed in the above-entitled proceeding be and it is hereby extended to and including July 27, 1942.

It Is Further Ordered that the Clerk of this Court be directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on review as certified and transmitted by him to this Court.

By the Court,

FRANCIS A. GARRECHT,  
Judge, U. S. Circuit Court of Appeals.

Dated this 14 day of May, 1942.

[Endorsed]: Filed May 14, 1942.

A True Copy.

Attest: May 14, 1942.

[Seal] (s) PAUL P. O'BRIEN,  
Clerk.

Now, July 20, 1942, the foregoing order certified from the record as a true copy.

[Seal] B. D. GAMBLE,  
Clerk, U. S. Board of Tax Appeals.

[Endorsed]: U. S. B. T. A. Filed May 18, 1942.

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[Title of Board and Cause—Docket No. 104290.]

CERTIFICATE TO TRANSCRIPT  
OF RECORD

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 34, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of July, 1942.

[Seal] B. D. GAMBLE,  
Clerk, United States Board of Tax Appeals

[Endorsed]: No. 10202. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Stimson Mill Company, a corporation, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed July 24, 1942.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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No. 10202

In the United States Circuit Court of Appeals  
for the Ninth Circuit

B. T. A. Docket No. 104290

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review,

v.

STIMSON MILL COMPANY,

Respondent on Review.

PETITIONER'S DESIGNATION OF THE  
PARTS OF THE RECORD TO BE PRINTED

To the Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit:

Guy T. Helvering, Commissioner of Internal  
Revenue, the petitioner on review herein, by his  
attorneys, Samuel O. Clark, Jr., Assistant Attorney

General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, pursuant to his petition for review of the decision of the United States Board of Tax Appeals entered January 27, 1942, designates the parts of the record considered material to the questions on review to be included in the printed transcript of the record, as follows:

1. Docket entries of all proceedings before the Board.
2. Pleadings before the Board:
  - (a) Petition including copy of deficiency letter.
  - (b) Answer.
3. Stipulation of Facts filed September 8, 1941, with Exhibit A. attached.
- 3a. Official Report of Proceedings before Board, September 8, 1941.
4. Opinion and Decision.
5. Petition for review, together with proof of service of notice of filing and of service of a copy of petition for review.
6. Statement of Points to be relied upon by the Commissioner.
7. Court order enlarging time for the preparation, transmission and delivery of the certified typewritten transcript of the record on review.

8. This designation of portions of the record, proceedings, and evidence to be contained in the printed record on review.

SAMUEL O. CLARK, JR.

Assistant Attorney General

J. P. WENCHEL

Chief Counsel, Bureau of Internal Revenue, Counsel for  
Petitioner on Review.

Service of a copy of the designation of the parts of the record to be printed is hereby admitted this 10 day of July, 1942. Agreed to.

P. W. MAXWELL,

Counsel for Respondent on Review  
804 White Building,  
Seattle, Washington

